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Remarks

Claims 1-8 and 23 are pending in the application.

Claims 1-8 are allowed.

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Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutter et al., U.S. Patent No. 5,760,934 ("Sutter"), in view of Falkenstein et al., U.S. Publication No. 2002/0080445 ("Falkenstein").

Applicants thank Examiner Tran for the phone discussion on December 7, 2006 regarding the priority date of the present application and that of Falkenstein.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR § 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel

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and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewriting to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 35 U.S.C. 103(a)

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sutter in view of Falkenstein. This ground of rejection is respectfully traversed.

Applicants' independent claim 23 recites, among others, that when a first carrier is not capable of transmitting first information over a fiber, the first information is modulated on a second carrier for transmission over the fiber. The Office Action does not find that teaching in Sutter. Thus, claim 23 is allowable over Sutter.

Applicants respectfully submit that Falkenstein is not proper prior art because the priority date of the present application is before Falkenstein's filing date of July 20, 2001, and also before the provisional filing date of July 21, 2000 that Falkenstein claims priority to.

Specifically, the present U.S. application is a national stage entry from the original international application PCT/US99/15897, which was filed on July 14, 1999. (The U.S. "filing date" of August 29, 2001 is misleading, because it is actually the date of the U.S. national stage, properly entered according to the PCT rules and schedule.) The PCT application claims benefit to U.S. provisional application 60/126,118 filed March 25,

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1999. Since the relevant dates for priority purposes are the PCT filing date (July 14, 1999) and its priority date (March 25, 1999), both of which are before the filing date of Falkenstein (or its provisional), Applicants submit that Falkenstein is not proper prior art.

Furthermore, the subject matter in claim 23 is fully supported in the original PCT application, for example, at least on page 1, line 4 to page 2, line 8, and each of the method steps in claim 23 has corresponding elements in the allowed apparatus claim 1. Thus, claim 23, which is essentially the same as in claim 1 and entitled to the original PCT application date of July 14, 1999, is also allowable over the cited references.

Since Sutter by itself does not teach or suggest at least the limitation of when a first carrier is not capable of transmitting first information over a fiber, the first information is modulated on a second carrier for transmission over the fiber as called for in Applicants' independent claim 23, the rejection is improper. Thus, claim 23 is allowable over the proposed combination of Sutter et al. in view of Falkenstein under 35 U.S.C. 103.

Allowed Claims

Applicants thank the Examiner for the allowance of claims 1-8.

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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, he is invited to call applicants' attorney so that arrangements may be made to discuss and resolve any such issues.

Respectfully,

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12/29/06

By



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